

to "representatives of United States Cellular" instead of "I" in the first word of the paragraph and "partners in La Star" rather than "[t]he Management Committee" at the beginning of the fourth sentence because Mr. Carlson, who participated for TDS and USCC, was not a member of the Management Committee.^{51/} Id. Mr. Nelson "simply, and regrettably, did not focus on those points" because he was focused instead on the more basic point that "direct communication between USCC and SJI was quite limited because it was not necessary." Id.

63. Mr. Nelson's explanation is credible and supported by the record. Prior to executing his written testimony in the La Star proceeding, he disclosed on the record that he did not participate in the subject conference calls. At his July 1990 deposition, he had made clear that there were "telephone conferences" regarding the amendment of the Joint Venture Agreement, and that the "one conversation" he had "was with Mr. Belendiuk." TDS/USCC Ex. 2, Tab S, at 19. There thus was no attempt on Mr. Nelson's part to testify that he participated in the conference calls held with SJI.

^{51/} Mr. Carlson generally negotiated settlements involving competing cellular applications and decided whether to settle in particular cases. TDS/USCC Ex. 2, ¶ 7; TDS/USCC Ex. 9, ¶¶ 7, 10. Mr. Carlson and Mr. Nelson also discussed the progress of negotiations, and Mr. Carlson advised Mr. Nelson of the results of his negotiations. TDS/USCC Ex. 2, ¶ 7; TDS/USCC Ex. 9, ¶ 7. Mr. Carlson had full authority to speak and act on behalf of USCC in such matters, and there generally was no need for Mr. Nelson to participate in the meetings in which Mr. Carlson participated because Mr. Carlson and Mr. Nelson both spoke for USCC. TDS/USCC Ex. 2, ¶ 8; TDS/USCC Ex. 9, ¶ 9.

64. Finally, the Bill of Particulars questions the accuracy of Mr. Nelson's testimony that his "primary contact during the time [he had] been a member of La Star's Management Committee ha[d] been with La Star's attorney, Arthur V. Belendiuk" because it implies that he had contacts with the Management Committee apart from Mr. Belendiuk. See B/P, p. 11. In fact, telephone calls from Mr. Belendiuk were Mr. Nelson's usual contact on La Star matters. Mr. Nelson's written testimony accurately reflected that fact.^{52/}

65. Although Mr. Nelson may have been imprecise in certain of his statements about the Management Committee, there remains no genuine issue as to his good faith. The record satisfactorily shows that he did not intentionally misrepresent facts or lack candor concerning the operation of the Management Committee. The imprecise testimony did not imply that USCC was less active in the decision-making process. Any imprecision or inaccuracy in Mr. Nelson's testimony flowed from his perspective, and not from any intention to be less than fully candid.

^{52/} Mr. Nelson did not intend to suggest that the other La Star contacts were with the Management Committee. He had other contacts with Andy Anderson, one of La Star's consultants, TDS/USCC Ex. 2, Tab I at 36-37, and knew that Kit Crenshaw, Maxey Resweber and La Star's engineering firm had also asked USCC to provide certain assistance, as Mr. Krohse had reported to Mr. Nelson. TDS/USCC Ex. 2, Tabs G & H.

2. USCC's Petition To Delete Footnote 3

66. After the Commission affirmed the La Star Initial Decision finding that USCC effectively controlled La Star, USCC filed the Petition To Delete Footnote Three. According to USCC counsel Alan Naftalin, the petition was filed because footnote three of the Commission's decision "appeared to leave open the possibility that a candor issue might be designated against USCC in future proceedings" in light of allegations by NOCGSA that SJI and USCC had lacked candor in the La Star proceeding. TDS/USCC Ex. 11, ¶ 20.^{53/} A draft of the petition was reviewed by LeRoy Carlson and Donald Nelson, among others, before it was filed. Both of them approved it. TDS/USCC Ex. 9, ¶ 15; TDS/USCC Ex. 2, ¶ 55.

67. The Bill of Particulars notes a possible issue as to the candor of the following statement about the Management Committee in the Petition to Delete Footnote Three:

Everything Mr. Nelson and USCC did at the request of La Star's counsel, Mr. Belendiuk, was done in the belief that Mr. Belendiuk was guided by the wishes of SJI, whose principals constituted three of the five members of the management committee and therefore, in Mr. Nelson's view, controlled it.^{54/}

^{53/} Footnote three had been raised by parties in other unrelated proceedings, and the Bureau consequently was conditioning other authorizations of TDS and USCC. See TDS/USCC Ex. 11, ¶ 20.

^{54/} B/P, p. 28, quoting Footnote Three Petition, p. 15.

This statement, however, now is supported by the record. As discussed above, see supra, ¶¶ 58-62, Mr. Nelson understood that Arthur Belendiuk was obtaining SJI's approval for proposed courses of action and believed that SJI's three votes truly controlled the Management Committee. The record establishes that Mr. Belendiuk had obtained SJI's approval and SJI's three votes did constitute control of any vote. Thus, there is no genuine issue about the candor of the quoted statement.

3. La Star Pleadings and Filings

68. The Bill of Particulars cites several statements in submissions filed by La Star as potentially less than candid concerning the functioning of the Management Committee.

69. 1987 Amendment and March 1988 Reply. Some of the statements concerning the Management Committee cited in the Bill of Particulars were made by La Star in its October 1987 Amendment and in its March 1988 response to a NOCGSA petition to deny La Star's application. Those statements were:

Except as otherwise expressly provided herein, complete and exclusive power to direct and control [La Star] is delegated to a Management Committee.^{55/}

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^{55/} B/P, p. 2, quoting La Star's October 26, 1987 Amendment ("1987 Amendment") at Exhibit L-2, Joint Venture Agreement, Article 4.1.

La Star's management team will make and subsequently implement all policy decisions affecting its cellular system.^{56/}

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The partnership itself is governed by a five member Management Committee. Section 4.1 [of the La Star Joint Venture Agreement] places the 'exclusive power to direct and control the Company' with the Management Committee. SJI appoints three members to the Management Committee and Star [USCC] appoints two. Most business and policy decisions of La Star are controlled by a simple majority vote of the Management Committee. Since SJI appoints three members to the Management Committee it has de facto control over La Star's day-to-day business activities.^{57/}

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Star [USCC] can block certain actions SJI may wish to take, but Star has no power to require SJI to take any action. SJI still retains majority voting interest, elects a majority of the members of the Management Committee and can conduct business on a majority vote.^{58/}

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TDS does not have decision-making authority with regard to construction or operation of the system. That power rests with the La Star Management Committee which is controlled by SJI.^{59/}

70. The record shows that those statements, which La Star filed very shortly after USCC acquired its interest in the joint venture, were consistent with what the principals of TDS

^{56/} B/P, p. 3, quoting 1987 Amendment, Exhibit L-7, p. 1.

^{57/} B/P, p. 3, quoting La Star's March 2, 1988 Reply to Petition of NOCGSA to Dismiss and Deny (the "March 1988 Reply"), pp. 9-10.

^{58/} B/P, p. 3, quoting March 1988 Reply, p 11.

^{59/} B/P, pp. 3-4, quoting March 1988 Reply, p. 13.

and USCC believed to be true. As noted above, the March 1988 Reply was based in part on an affidavit of H. Donald Nelson. See TDS/USCC Ex. 1, Tab C, pp. 23-24. Mr. Nelson did not review the 1987 Amendment or the 1988 Reply, but believed that the central point he was supporting with his affidavit -- that the Joint Venture Agreement placed SJI in control of La Star -- was correct. See supra ¶¶ 34-45.

71. Motion For Summary Decision. Numerous statements concerning the operation and governance of La Star by the Management Committee also were made in a pre-hearing Motion for Summary Decision filed by La Star on August 15, 1990. Illustrative of such statements are the following:

The Management Committee, which is controlled by SJI Cellular, has always and will continue to control La Star.^{60/}

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Furthermore, any actions taken by consultants, engineers, attorneys, or Star, USCC and TDS have been taken at the request of the Management Committee.^{61/}

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SJI Cellular elects a majority of the members of the Management Committee, which conducts La Star's day-to-day business by a majority vote.^{62/}

^{60/} B/P, p. 9, quoting Summary Decision Motion, p. 11.

^{61/} B/P, p. 9, quoting Summary Decision Motion, p. 15.

^{62/} B/P, p. 9, quoting Summary Decision Motion, p. 22.

72. As discussed below, the record does not support a finding that the Summary Decision Motion intentionally misrepresented facts or lacked candor in its statements about the Management Committee. Examination of the motion itself negates any inference that the motion intended to imply that the Management Committee functioned more formally and frequently than in fact it did, or that all members from each side (SJI and USCC) always participated in discussions. The motion explicitly stated: "La Star has functioned on an informal basis," TDS/USCC Ex. 1, Tab G, p. 3; "Seldom was there a need for a 'meeting' of the Committee," id.; "La Star's Management Committee has functioned on an informal basis," id., p. 11; and, "Formal meetings were not necessary for most of the decisions. Agreement with counsel's recommendations was communicated to counsel via telephone from the members of the Management Committee," id. at 11-12.

73. Additionally, a month before La Star filed the Summary Decision Motion, the principals of La Star all had testified to the informality of La Star's management at their July 1990 depositions. USCC's Donald Nelson had testified that there had been only one actual meeting of the Management Committee, that any other meetings had been over the telephone or through La Star's counsel, and that to his recollection there had never been any formal votes taken by the Committee. TDS/USCC Ex. 2, Tab I, pp. 16-18. Kenneth Meyers, USCC's other

representative on the Management Committee, had testified that he was not aware of any Management Committee meetings and that he had not been consulted on any decisions that the Management Committee may have made. TDS/USCC Ex. 12, pp. 10, 14. SJI's John Brady had testified that there had been no formal meetings of the Management Committee, that members of the Committee had met only once, in Chicago in 1987, and that no formal votes were taken. TDS/USCC Ex. 13, pp. 4-9. SJI's Sinclair Crenshaw had testified that the Management Committee had never taken an official vote, that La Star's counsel was the one who initiated the meetings or conference calls, and that La Star's counsel was SJI's point of contact and communication with USCC. TDS/USCC Ex. 1, Tab G, pp. 58-59. Moreover, at the depositions, La Star's counsel, Arthur Belendiuk, had stipulated that there had not been formal meetings of the Management Committee, a stipulation that NOCGSA's counsel accepted. TDS/USCC Ex. 13, at 12-13.

74. The disclosure about the operations of the Management Committee in the earlier deposition testimony and in the Summary Decision Motion itself leaves no basis for finding that the motion was intended to mislead the Commission about the Committee. See supra, at 16-18. Hence, there is no genuine issue as to the candor of the motion on that point.

D. Description of USCC's Activities

75. The Bill of Particulars questions whether a number of the statements made to the Commission in the La Star proceeding were candid descriptions of USCC's activities with respect to La Star, or whether instead they were intended to downplay or conceal the nature and extent of USCC's role. The record in this proceeding amply demonstrates that the statements at issue were accurate in all material respects and were not intended to mislead the Commission.

1. Activities of Donald Nelson

76. The HDO and the Bill of Particulars call into question the candor of Donald Nelson's statements about his role and the role of USCC in the La Star proceeding. Illustrative of such statements are the following:

MR. TOLLIN: *Any specific duties you have on the Management Committee?*

MR. NELSON: *Yes.*

MR. TOLLIN: *Could you describe those duties?*

MR. NELSON: *Receive bills and process payment thereof.^{63/}*

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^{63/} B/P, p. 5, quoting July 18, 1990 deposition testimony of H. Donald Nelson, p. 12.

Although I am a member of La Star's Management Committee, I have not been actively involved in the day-to-day management of La Star's affairs, which, to my knowledge, have been litigious in nature.^{64/}

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All services provided by USCC to or on behalf of La Star were technical in nature and were provided at the specific request of SJI Cellular or the Management Committee, either directly or through La Star's counsel.^{65/}

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MR. TOLLIN: Now, how limited was that involvement [in the day-to-day affairs of La Star]? What were you involved in?

MR. NELSON: I was involved with communication with Mr. Belendiuk. I was involved in the questions that came from him that we were to follow through on cell sites, on payment of bills, on -- I guess, that's about it.^{66/}

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ALJ CHACHKIN: What do you mean by that statement, that you haven't been actively involved in the day-to-day management of La Star's affairs, what do you mean by that?

MR. NELSON: In that statement I mean that I am not involved in the day-to-day management. When I am requested to do something by Mr. Belendiuk or by the management committee I would respond.^{67/}

^{64/} B/P, p. 10, quoting August 1990 Declaration of H. Donald Nelson, p. 2.

^{65/} B/P, p. 12, quoting August 1990 Declaration of H. Donald Nelson, p. 4.

^{66/} B/P, p. 17, quoting oral hearing testimony of H. Donald Nelson, La Star Tr. 1334.

^{67/} B/P, pp. 17-18, quoting oral hearing testimony of H. Donald Nelson, La Star Tr. 1349-50.

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Aside from asking USCC personnel to respond helpfully to Mr. Belendiuk's requests for assistance, I have had very little personal involvement, and I have taken very little personal interest, in the La Star matter.^{68/}

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I have always viewed the La Star matter as a trivial aspect of USCC's business, for which people other than USCC employees have been primarily responsible, and I have devoted only the minimal time necessary to it; I have not sought opportunities to do more.^{69/}

- As discussed below, there is no basis in the record for finding that Mr. Nelson intended to mislead the Commission by these statements. In his testimony submitted in this proceeding, Mr. Nelson makes clear that the foregoing statements were candid and truthful.

- 77. First, Mr. Nelson states that he responded accurately at his La Star deposition when he answered that his specific duty on the Management Committee was to "[r]eceive the bills and process the payment thereof." TDS/USCC Ex. 2, Tab S at 7.^{70/} This statement accurately described the specific duty that he believed he had on the Management Committee -- to pay the bills for La Star pursuant to the Joint Venture Agreement.

- ^{68/} B/P, p. 26, quoting USCC Exhibit 1 (Testimony of H. Donald Nelson), p. 15.

- ^{69/} B/P, p. 27, quoting USCC Exhibit 1 (Testimony of H. Donald Nelson), p. 15.

- ^{70/} This deposition testimony was repeated in Mr. Nelson's written testimony. TDS/USCC Ex. 2, Tab W, 7.

TDS/USCC Ex. 2, ¶ 2. His only specific duty for La Star was "to see that USCC paid the bills for La Star pursuant to the Joint Venture Agreement." TDS/USCC Ex. 2, ¶ 64. Under the Joint Venture Agreement, prior to June 1990, Star was responsible for paying all of the expenses associated with prosecuting La Star's application. See TDS/USCC Ex. 14, at 127. After USCC acquired Star, USCC thus was obligated to pay all of those expenses.^{21/}

78. While Mr. Nelson also responded to Mr. Belendiuk's requests for information or assistance, those activities were not duties imposed by the Joint Venture Agreement. Mr. Nelson states that he did not understand the question about his "specific duties on the Management Committee" to call for him to detail everything he had done regarding La Star. TDS/USCC Ex. 2, ¶ 65. In any event, he did disclose his other activities elsewhere in his deposition. At other points, he spoke of his discussions with Mr. Belendiuk, TDS/USCC Ex. 2,

^{21/} The Bill of Particulars also raises an issue regarding Mr. Nelson's candor based on his reluctance to state unequivocally that he personally saw and processed payments for all La Star expenses, as opposed to payments for the expenses that he received. See B/P, pp. 18-19. Mr. Nelson tried to make clear in his testimony that he processed every request for payment that he received, but that there might have been other requests processed by USCC of which he was unaware. As a matter of fact, he was appropriately cautious in this regard, for other documents indicate that he did not process all La Star expense payments handled by USCC. See TDS/USCC Ex. 2, Tab Y (USCC check request forms and support documents without Nelson's initials or handwriting). Mr. Nelson did not see these payment requests, and others at USCC processed those payments. TDS/USCC Ex. 2, ¶ 77. Thus, Mr. Nelson's testimony in this regard was not evasive, but rather was carefully candid and accurate.

Tab I at 19; his involvement in the renewal of La Star's cell site options, id. at 31-34; his discussions with La Star consultant Dr. Andy Anderson, id. at 36-37; the provision of some information for the interim operating authority application, id. at 51-52; and USCC's work on preparing La Star's budget, id. at 45-46, 63-66.^{72/}

79. Second, the Bill of Particulars questions whether Mr. Nelson's statement that he was not "actively involved in the day-to-day management of La Star's affairs" erroneously made it appear as though he played only a minor role in La Star's affairs and that there was little activity other than legal matters. Mr. Nelson explains that he did not consider the occasional calls he received from Arthur Belendiuk or the processing of La Star's bills to constitute "day-to-day management" of La Star's affairs. TDS/USCC Ex. 2, ¶ 66. All of La Star's activities, in his view, were related to La Star's litigation for a construction permit. Id. In his experience

^{72/} Mr. Nelson did not mention in his testimony in the La Star proceeding that in late 1987 and early 1988 he had made introductory telephone calls on behalf of La Star to the Creekmores, business partners of USCC in another market. He explains that the reason he did not mention those conversations is simply that he had forgotten them. TDS/USCC Ex. 2, ¶ 69 and Tab X. In that connection he notes that he typically participated in 20 to 30 telephone calls a day involving USCC's business partners in various markets. This explanation is credible and uncontradicted by anything in the record. In any event, Mr. Nelson was not asked at either his 1990 deposition or at the hearing in the La Star proceeding about any communications that he had with the Creekmores or any of USCC's partners other than SJI.

overseeing the day-to-day management of numerous cellular systems at USCC, day-to-day management involves hiring personnel, selecting and maintaining equipment, creating marketing plans, building and constructing cellular systems, reviewing financial performance, and other business matter related to construction, operation and development of cellular systems. Id. This is not what he did for La Star. Id.

80. Third, the Bill of Particulars also identifies the portion of Mr. Nelson's hearing testimony in which he was asked by the Presiding Judge in the La Star proceeding about the statement from his written testimony regarding day-to-day management. See B/P, pp. 17-18 (citing TDS/USCC Ex. 2, Tab J at 22-23) (quoted supra, ¶ 76). To the extent that the answer quoted in the Bill of Particulars left any ambiguity, that ambiguity was eliminated by Judge Chachkin when he subsequently asked Mr. Nelson, "as far as you're concerned, you have been involved, but you wouldn't describe it as day-to-day management, is that your testimony?" and Mr. Nelson responded, "Right." TDS/USCC Ex. 2, Tab J at 24. Thus, read in context, Mr. Nelson's testimony is accurate.^{73/}

^{73/} The Bill of Particulars questions whether Mr. Nelson was candid in stating that he did not receive a periodic accounting of La Star's expenses. B/P, pp. 9-10. Mr. Nelson could not have been receiving such periodic accountings because La Star, SJI and USCC had not prepared financial statements. Mr. Nelson did see La Star financial information in the form of the La Star bills that crossed his desk, which he acknowledged. TDS/USCC Ex. 2, ¶ 21.

81. Fourth, the Bill of Particulars also questions Mr. Nelson's statement that he devoted only minimal time to La Star. See B/P, p. 27. From his perspective, however, that testimony was accurate because the amount of time he devoted to La Star was minimal. Mr. Nelson asserts: "It was my perception and belief that the time I devoted to La Star was minimal in comparison with my other duties and responsibilities at United States Cellular." TDS/USCC Ex. 2, ¶68. This statement is true. The period 1987 through 1990 was an exceptionally busy time for USCC and for Mr. Nelson personally. The company put 43 new cellular systems into operation over that period, effectively doubling in size each year. Mr. Nelson was personally working 70 to 80 hours per week and was frequently traveling, in many periods at least half the time. Id. ¶ 6. Further, Mr. Nelson explains, because his work concentrates on cellular operations, his principal focus is on markets that USCC owns and operates; he devotes less time and concern to markets where USCC has only a minority interest. Id. ¶ 9.

82. Fifth, the Bill of Particulars questions whether Mr. Nelson's written testimony in the La Star proceeding stating that "[a]ll services provided by USCC to or on behalf of La Star were technical in nature . . . ," TDS/USCC Ex. 2, Tab T at 4 incorrectly made it appear that USCC provided only technical services for La Star, B/P, p. 12. The record here establishes that the renewals of cell sites, budgeting, and tax return

preparation work that USCC provided for La Star were, from USCC's perspective, technical, ministerial tasks, involving processing payments, inputting variables into a computer model, and filling in zeros on a tax return for a nonoperational company. TDS/USCC Ex. 8, ¶¶ 6, 8-9, 11, 12. Regardless of the validity of the Commission's legal conclusion concerning the effect of these activities on the control of La Star, the record establishes that Mr. Nelson did not recognize these activities as anything other than technical in nature.

83. Finally, Mr. Nelson was testifying truthfully when he stated that he viewed La Star as a "trivial aspect" of USCC's business for which other people were primarily responsible. That view is supported by a number of factors. Although there were costs of litigation in La Star, these costs were small compared with USCC's costs of conducting its business. See supra, Section IVA. Moreover, as Mr. Nelson has explained, his activities with respect to La Star were minimal compared to the tasks he generally performs at USCC.

84. Nothing in the record contradicts the explanations by Mr. Nelson of his state of mind in making statements concerning his La Star activities. His explanations are fully credible and have been corroborated in many respects. Moreover, Mr. Nelson had no motive to shade his testimony in the La Star proceeding because he believed that USCC's activities

were proper and he was unaware of any reason why USCC or La Star would be harmed if he testified truthfully. TDS/USCC Ex. 2, ¶¶ 80-81. Accordingly, the record establishes that there was no intent on Mr. Nelson's part to mislead the Commission about the extent to which he and USCC were involved in La Star matters.

2. Statements and Activities of Richard Goehring

85. The Bill of Particulars raises a series of questions concerning the testimony of Richard W. Goehring, USCC's Vice-President of Engineering and Network Operations.^{74/} Mr. Goehring was deposed in the La Star proceeding in July 1990, TDS/USCC Ex. 7, Tab C, and testified at the La Star hearing in January 1991. TDS/USCC Ex. 7, Tab E. The Bill of Particulars cites various statements he made concerning his activities and the activities of his engineering staff with respect to La Star.^{75/} The issues raised in the Bill of Particulars relating to Mr. Goehring fall into three general categories:

- (1) whether Mr. Goehring candidly described his involvement in the preparation of the engineering portions of La Star's filings;
- (2) whether Mr. Goehring candidly described his involvement with Richard L. Biby and his firm on the La Star project; and

^{74/} No issues were raised regarding Mr. Goehring's testimony in the HDO.

^{75/} See e.g., B/P, pp. 13-14, quoting August 1990 Declaration of Richard Goehring, p. 1; B/P, p. 13, quoting oral hearing testimony of Richard Goehring, La Star Tr. 1498-99.

- (3) whether Mr. Goehring candidly described the involvement of other USCC employees in La Star matters.

As discussed below, Mr. Goehring's testimony, though terse in certain respects, was candid concerning these matters and was given without any intention to deceive the Commission.

86. Richard Goehring's Involvement In Preparing La Star's Filings. First, Mr. Goehring accurately described his involvement in the engineering portions of La Star's filings, even if the brevity of his written testimony made it overly simple and subject to misunderstanding. The primary issue addressed in the Bill of Particulars as it relates to Mr. Goehring is his asserted lack of involvement in the preparation of the engineering portions of La Star's 1987 Amendment and its 1988 application for Interim Operating Authority. At issue are the following statements:

his deposition testimony that he did no "work" on the 1987 amendment or the 1988 interim application, B/P, at 7;

his deposition testimony that he was not involved in preparing the engineering portions of La Star's filings, B/P, at 6;

his August and September 1990 testimony that he "played no role in the engineering or design" of La Star's 1987 amendment or 1988 interim operating authority application, B/P, at 13;

his August and September 1990 testimony that no engineer from USCC or TDS did any work or provided any engineering services on behalf of La Star, B/P, at 13-14;

his testimony in the La Star proceeding that he did not participate in the preparation of the 1987 amendment or the

1988 interim operating authority application, B/P, at 24-25;

his July 1990 deposition testimony that he played no role in the selection of equipment for La Star's interim or permanent systems, B/P, at 6; and

his August and September 1990 testimony that he "did not choose the type of equipment La Star would use." B/P, at 13.

The Bill of Particulars questions whether these statements intentionally gave the erroneous impression that "USCC played no role in the engineering aspects of La Star's application." B/P, at 13.

87. The undisputed facts demonstrate that Mr. Goehring's testimony about his involvement in La Star project was accurate to the best of his knowledge and belief, even if it was overly simple. The testimony of Richard Biby and Mark Peabody confirms that Mr. Biby and his consulting engineering firm, Communications Engineering Services ("the Biby firm"), did La Star's engineering work. Arthur Belendiuk had retained the Biby firm for that purpose in early to mid 1987, before USCC acquired its interest in La Star. TDS/USCC Ex. 5, ¶¶ 1-3; TDS/USCC Ex. 1, ¶ 8.^{76/} The Biby firm's work on the La Star project was handled principally by Mark Peabody, who prepared initial drafts and made telephone calls associated with that process. TDS/USCC Ex. 5, ¶ 4; TDS/USCC Ex. 6, ¶¶ 1, 7.

^{76/} Mr. Biby has served applicants and licensees of the FCC since 1983. TDS/USCC Ex. 5, ¶ 1.

88. The Biby firm, working with La Star's counsel, Arthur Belendiuk, prepared the engineering portions of La Star's 1987 amendment, 1988 application for interim authority, and 1990 written direct case without substantive input from Richard Goehring. Mr. Biby and Mr. Peabody reviewed La Star's original 1983 application, evaluated the original system design, and worked on updating the application. TDS/USCC Ex. 5, ¶¶ 2, 8; TDS/USCC Ex. 1, ¶¶ 7-8. Mr. Belendiuk, Mr. Biby and Mr. Peabody collectively decided that La Star's service area should not be expanded beyond the original 1983 proposal. TDS/USCC Ex. 6, ¶ 8.⁷⁷ Mr. Peabody worked with a real estate agent in the New Orleans area both to renew lapsed cell site option agreements and to locate new sites to replace some that were no longer available. TDS/USCC Ex. 6, ¶ 9. Mr. Peabody forwarded site maps to the real estate agent and selected appropriate replacement sites. TDS/USCC Ex. 6 ¶¶ 1, 9. The Biby firm also reviewed the engineering portions of NOCGSA's various submissions to the FCC and prepared a critique of those submissions for use in La Star's petition to deny NOCGSA's application. TDS/USCC Ex. 6, ¶ 6; TDS/USCC Ex. 5, ¶ 4.

89. In addition, the Biby firm designed the cellular system proposed in La Star's 1988 application for interim operating authority and prepared all the related engineering

⁷⁷ Because TDS and USCC held no interest in La Star in 1983 when the original application was filed, USCC clearly had nothing to do with the preparation of that application.

portions of that application. TDS/USCC Ex. 5, ¶¶ 4, 8; TDS/USCC Ex. 6, ¶ 6. The equipment categories and the types of equipment proposed in that application were specified by the Biby firm. TDS/USCC Ex. 6, ¶ 13.

90. Mr. Goehring did not perform any of these tasks. As Mr. Biby testified, "my firm did La Star's engineering work." TDS/USCC Ex. 5, ¶ 11 (emphasis in original); see TDS/USCC Ex. 6, ¶¶ 6, 16. All of the engineering work performed by the Biby firm was directed, approved and supervised by Mr. Belendiuk. TDS/USCC Ex. 5, ¶ 5; TDS/USCC Ex. 1, ¶ 8. No one at USCC, including Mr. Goehring, directed or instructed the Biby firm in its work on the La Star project. TDS/USCC Ex. 5, ¶¶ 8, 12. As confirmed by Mr. Peabody, "at no time did Mr. Goehring ever purport to direct my work or instruct me what to do." TDS/USCC Ex. 6, ¶ 16.^{78/}

91. Mr. Goehring has acknowledged that his responsibility with regard to La Star's engineering was "to be

^{78/} This testimony clearly answers the issues raised in the Bill of Particulars as to the statement in the Petition to Delete Footnote 3 that USCC did not supervise preparation of the 1987 amendment, B/P, at 29, and that USCC neither prepared nor reviewed La Star's engineering exhibits before they were filed. B/P, at 29. Both Mr. Biby and Mr. Peabody have confirmed in this proceeding that Mr. Goehring did not supervise or direct their work in any way. TDS/USCC Ex. 5, ¶¶ 8, 12; TDS/USCC Ex. 6, ¶ 16. While Mr. Goehring was sent copies of documents and drafts, his "review" of these materials generally was limited to determining that they related to La Star and did not require his substantive input. See TDS/USCC Ex. 7, ¶ 11.

helpful and answer any questions from Mr. Belendiuk or Mr. Biby's firm, if necessary." TDS/USCC Ex. 7, ¶ 8.^{79/} Mr. Belendiuk told the Biby firm that Mr. Goehring would serve as its principal point of technical contact at USCC. TDS/USCC Ex. 6, ¶ 9. Mr. Goehring, like Mr. Crenshaw or Mr. Brady of SJI, was so designated in order to serve as a resource whenever the Biby firm thought he could be helpful. TDS/USCC Ex. 5, ¶ 6.

92. Given that responsibility, Mr. Goehring talked with Mark Peabody about the La Star project on a few occasions. TDS/USCC Ex. 6, ¶ 15; TDS/USCC Ex. 7, ¶ 15. Those conversations were typically very short and generally involved requests for assistance in processing cell site acquisitions and/or renewals. TDS/USCC Ex. 7, ¶¶ 15-16; TDS/USCC Ex. 6, ¶ 15. Mr. Goehring's activities in response to Mr. Peabody's requests were primarily clerical in nature, involving approval of invoices for cell site option renewal payments, signing cell site option renewals and approving payment for the real estate agent. TDS/USCC Ex. 7, ¶ 15. On at least one occasion, Mr. Peabody also raised technical questions with Mr. Goehring about matters on which the Biby firm had insufficient experience. TDS/USCC Ex. 7, ¶ 16; TDS/USCC Ex. 6, ¶ 15. From Mr. Goehring's perspective, responding to Mr.

^{79/} Mr. Goehring also was asked to authorize payments for Mr. Biby's work on behalf of La Star and to be sure that the charges were reasonable, although he did not believe he had the authority to direct or approve the engineering work that had been done by Mr. Biby's firm on behalf of La Star. TDS/USCC Ex. 7, ¶ 9.

Peabody's requests took an insignificant amount of his time.
TDS/USCC Ex. 7, ¶ 15.^{80/}

93. Mr. Goehring explained in this proceeding the statements in his declarations attesting to his lack of work on La Star's engineering matters. He testified that, to him, there was a large difference between the comprehensive engineering, planning, and design work that he ordinarily did when developing and building USCC's cellular systems and the type of help that he was asked to provide on the La Star project. TDS/USCC Ex. 7, ¶ 21.^{81/} When he said he did no "work" on behalf of La Star, he meant engineering work of the kind he ordinarily performed for USCC.^{82/} He did not think the limited tasks he performed on the

^{80/} Although Mr. Goehring was the Biby firm's designated principal contact at USCC, most of Mark Peabody's contact with USCC was actually not with Mr. Goehring but with Mark Krohse or Tom Gilliland, an assistant to Mr. Goehring. TDS/USCC Ex. 6, ¶ 14. As Mr. Peabody explained, Mr. Goehring was often out of the office when Mark Peabody called. TDS/USCC Ex. 6 ¶ 14. In those circumstances, Mr. Peabody would sometimes try to find someone else at USCC with whom he could speak. TDS/USCC Ex. 6, ¶ 14.

^{81/} Mr. Goehring determined or approved all of the significant technical parameters of USCC's systems. TDS/USCC Ex. 7, ¶ 4. For USCC he was integrally involved in determining the number and location of cell sites and mobile telephone switching offices; the size and type of towers; what cell site buildings to use and their design; how many channels to equip in each site; and the type and vendor of equipment to purchase for the system. Id.

^{82/} The years 1987 and 1988, when La Star filed its amendment and then application for interim authority, were a busy period for USCC and Mr. Goehring. USCC put seven cellular systems on the air in 1987 and another eighteen in 1988. Ex. 7, ¶ 5. Mr. Goehring had direct responsibility for the design and construction of those systems, as well as for the engineering
(continued...)

La Star project were engineering work. Id. ¶ 22. Thus, Mr. Goehring believed that his declarations were truthfully stating that he was not responsible for the engineering decisions or system design proposed by La Star. In his own words, "Simply stated, I was not responsible for the engineering activities of La Star and I did not perform those functions or believe that I was involved in any significant way." Id. ¶ 21.

94. This is fully corroborated by La Star's outside consulting engineers, Richard Biby and Mark Peabody. Biby has testified in this proceeding that:

Mr. Goehring and his staff did not perform any of the engineering work involved in designing La Star's proposed cellular system or preparing the engineering portions of La Star's applications. That work was performed by my firm. We evaluated the system's design and updated the cell site information for the 1987 amendment. We also prepared the system design for the 1988 interim authority application. At Mr. Belendiuk's request, we also prepared the engineering exhibits for La Star's direct written case in late 1990. Mr. Goehring did none of that work. Nor did he supervise the work we were doing. Apart from serving as a technical resource on a limited number of occasions, to my knowledge he had no involvement with La Star except to authorize payment of our bills by USCC.

TDS/USCC Ex. 5, ¶ 8. Mr. Peabody confirmed that:

Although Mr. Goehring and others were available for questions, neither for the 1987 amendment nor for the 1988 application for interim operating authority did they participate in designing the configuration of La Star's

^{82/}(...continued)

portions of related submissions to the FCC. Id. During this period, Mr. Goehring had only one other engineer on staff to assist him with these responsibilities. Id.

cellular system, determining the location of cell sites, determining proposed tower heights, or deciding what equipment would be proposed. Those determinations were made by CES [the Biby firm] in consultation with Art Belendiuk.

TDS/USCC Ex. 6 ¶ 16.^{83/}

95. Although several of his statements were written in a categorical manner and did not detail all of his actions, the record in this proceeding demonstrates that Mr. Goehring did not attempt to conceal his actions in the La Star proceeding. First, the very declarations at issue clearly disclosed that he approved invoices for the extension of cell site option agreements and that he signed those agreements. TDS/USCC Ex. 7, Tab D, p. 1 ¶3, Tab E, p. 1 ¶ 2. Second, before signing the declarations at issue, he testified in his July 1990 La Star deposition that he had talked with Mr. Peabody about La Star, TDS/USCC Ex. 7, Tab C at 12,^{84/} that he had signed cell site option renewals and had approved invoices for payments extending those option renewals, id. at 14-15, 18-19, and that he had turned over to counsel for production to NOCGSA documents

^{83/} This testimony also confirms the statement in the Petition to Delete Footnote Three that USCC gave no direction or guidance to La Star's consulting engineer. B/P, p. 29. Both Mr. Biby and Mr. Peabody confirm that Mr. Goehring did not supervise or direct their work in any way and was available for questions only if the Biby firm decided it was necessary.

^{84/} Mr. Goehring was not asked at his La Star deposition or at the La Star hearing about the substance of his conversations with Mr. Peabody.